3-16-2016

Maravilla v. J.R. Simplot Company Appellant's Cross Reply Dckt. 43538

IN SUPREME COURT OF THE STATE OF IDAHO

JOSEPH JERRY MARAVILLA,

Claimant/Respondent/Cross-Appellant,

vs. Docket No.: 43538

J.R. SIMPLOT COMPANY,

Defendant/Appellant/Cross-Respondent.

APPELLANT/CROSS-RESPONDENT'S REPLY BRIEF

Appeal from the Industrial Commission of the State of Idaho,

R.D. Maynard, Chairman presiding.

Daniel A. Miller
Residing at Boise, Idaho, for Defendant/Appellant/Cross-Respondent

Patrick George
Residing at Pocatello, Idaho, for Claimant/Respondent/Cross-Appellant

TABLE OF CONTENTS

TABLE OF CASES AND AUTHORITIES

Cases

Statutes

ADDITIONAL ISSUES ON APPEAL

1. Did the Industrial Commission commit error when it determined that this Court's employer negligence rule as set forth in *Liberty Mutual v. Adams*, 91 Idaho 151, 417 P.2d 417 (1966) was obsolete, because of the passage of Idaho's comparative fault laws that abrogated the common law doctrine of joint and several liability?
2. If this Court agrees that Simplot's fault cannot be re-litigated by the Commission due to the principals of Res Judicata, is the remainder of the appeal moot?

ARGUMENT

I. RES JUDICATA

A) Privity

Claimant/Respondent/Cross-Appellant, Jerry Joseph Maravilla (hereafter "Maravilla"), argues that claim preclusion cannot apply to this case because Defendant/Appellant/Cross-Respondent, J.R. Simplot Company (hereafter "Simplot"), was not a party to the settlement agreement between Maravilla and Idaho Industrial Contractors (IIC) which resolved Maravilla's third party lawsuit against IIC. Respondent/Cross-Appellant's Brief, pp. 10-13.

The issue is not whether Simplot was in privity with Maravilla with respect to Maravilla's settlement agreement with IIC. The issue is whether Simplot was in privity with Maravilla with respect to Maravilla's third-party negligence action against IIC. As noted in Simplot's initial brief, when Maravilla brought his negligence suit, he was doing so not only on his own behalf, he was

doing it on behalf of Simplot as well. Appellant's Brief, pp. 6-7; I.C. §72-223(2) and I.C. §72-223(3).

This Court has held that to be a privy, a person not a party to the former action must derive his interest from one who was a party to it. *Ticor Title Co. v. Stanion*, 144 Idaho 119, 124 (2007).

Maravilla cites this Court to its decision in *Struhs v. Prot. Techs*, 133 Idaho 715, 992 P.2d 164 (1999) as support for his proposition that Simplot was not in privity with Maravilla as it relates to the settlement agreement. The *Struhs* decision actually supports Simplot's position.

This Court held in *Struhs* that in a third-party tort case, there is only one cause of action, and one right to subrogation, and when the employee brings their third-party action, **the employer and its insurer are bound by estoppel** to the results of that trial conducted by the employee. *Struhs*, 133 Idaho at 721. This Court also held that when Struhs brought his action against the third-party, the employer's right to subrogation was **derivative** of Struhs' recovery. Id. emphasis added. The employer was not required to file a separate tort claim against the third-party to preserve its right to subrogation. Id.

This Court's decision in *Struhs* settles the issue of whether Simplot was in privity with Maravilla in Maravilla's third-party lawsuit with IIC. It is not relevant to this Court's decision of whether Simplot was a privy to Maravilla's settlement agreement with IIC. The *Struhs*' decision simply held that the employee and third-party cannot by way of a settlement agreement that the employer did not participate in, impact the employer's right of subrogation in the settlement

proceeds. Id.

B) Claim

Maravilla argues that Simplot is actually raising the defense of issue preclusion and not claim preclusion. Maravilla is mistaken.

The concept of Res Judicata applies to both claim preclusion and issue preclusion. *Ticor, supra.* The meaning of claim for claim preclusion purposes is very broadly defined. "Claim preclusion bars adjudication not only on the matters offered and received **to defeat the claim**, but also as to every matter which might and should have been litigated in the first suit." *Ticor,* 144 Idaho at 123, emphasis added. This Court went on to state that a final judgment extinguishes all claims arising out of the same transaction or series of transactions, out of which the cause of action arose. Id.

There is no question that Simplot's fault was raised in the litigation between Maravilla and IIC. Simplot's negligence was a claim made by IIC in the suit. Simplot's alleged fault in Maravilla's accident was part of the transaction out of which Maravilla's action arose. Therefore, claim preclusion is the appropriate theory to analyze Simplot's Res Judicata defense.

Maravilla argues that only the Industrial Commission can decide Simplot's subrogation interest in Maravilla's settlement proceeds. Maravilla ignores the numerous district court cases that resulted in an appeal to this Court, and that are cited by Maravilla in his brief, that totally extinguished the employer's subrogated interest in the employee's third-party recovery, starting with

Liberty Mutual Insurance Company v. Adams, 91 Idaho 151, 417 P.2d 417 (1966) and ending with *Izaguirre v. R&L Carriers Shared Servs., LLC*, 155 Idaho 229, 308 P3d 929 (2013). It is clear that the district courts in Idaho have jurisdiction to determine the claim of whether an employer was at fault in an employee's third-party negligence case. Maravilla's argument that the employer's fault is not a claim for claim preclusion purposes is without merit.

Not only does the district court have jurisdiction to determine the employer's proportionate fault, it is really the only forum that is suited to do so. As noted in Simplot's initial brief, this Court has held that Idaho Code §72-223 provides for one action against a third party, and an employer does not have to join the third party lawsuit to preserve its right to subrogation. *Struhs,* 133 Idaho at 721. The proper forum to determine the claims in the third party negligence action is the district court which is best suited for determining damages, and apportioning fault to each individual or entity that contributed to the employee's damages. The determination of fault and damages are not best suited for hearing in the Industrial Commission which is charged with overseeing a no-fault system and the award of statutory benefits.

Maravilla argues that to accept Simplot's argument would force claimants to go to trial. This is not true. If this Court accepts Simplot's argument this Court's decision would encourage plaintiff's attorneys to work with and speak to the employer which has a statutory subrogated interest in the outcome of the suit/settlement instead of entering into a settlement agreement without the input or consent of the employer and then seeking another forum in an attempt to defeat the

employer's statutory interest. If this Court were to accept Maravilla's position, the practical effect would be an increase in litigation because the employee could settle their case without concern for the employer's subrogated interest, and then head to the Commission in an effort to defeat the employer's statutory right of reimbursement.

Maravilla concedes that the "settlement agreement" satisfies the final judgment requirement of claim preclusion Respondent/Cross-Appellant's Brief, p. 15. Maravilla does not really address the basis of Simplot's appeal, that is did the Commission commit an error by ruling that the dismissal with prejudice of Maravilla's third party lawsuit was not a final judgment. As Simplot noted in its initial brief, a dismissal of an action with prejudice is a final decision, and acts as an adjudication on the merits. (Appellant's Brief, p. 8). This Courts February 12, 2015, Order regarding the form of judgments makes it clear that the dismissal with prejudice acted as a final judgment in Maravilla's third party lawsuit with IIC.

Maravilla's third party lawsuit was dismissed with prejudice, and that dismissal acted as a final judgment on the merits of the case. Simplot's negligence was a claim that was asserted in the third party negligence action, and a final judgment was entered in that third party action. There is only one third party action and right to subrogation, and the issues related to fault and damages are best suited for determination in the district court, not the Industrial Commission. Maravilla is prohibited from re-litigating the claim involving Simplot's fault in another forum. This Court should reverse the Commission's decision and hold that Res Judicata does bar the Commission from

litigating Simplot's fault with respect to Maravilla's injury.

II. MOOTNESS DOCTRINE

A case becomes moot if the party lacks a legally cognizable interest in the outcome or there is not at present a real and substantial controversy that is capable of being concluded through judicial decree of specific relief. *Podsaid v. State Outfitters & Guides Licensing Bd.*, 356 P.3d 363, 366 (2015). If this Court finds that the Commission committed error by denying Simplot's Res Judicata defense on the basis that there was no final judgment entered in Maravilla's third party lawsuit, then the issue regarding the Commission's decision regarding comparative fault is moot because neither party would have a legally cognizable interest in the outcome as the Commission would not have to address Simplot's fault on remand.

III. COMPARATIVE FAULT

In the event this Court affirms the Commission as to the issue raised by Simplot in its appeal, Simplot offers this response to Maravilla's argument regarding the Commission's decision that the abrogation of the common law doctrine of joint and several liability in Idaho rendered this Court's employer negligence rule in *Liberty Mutual* obsolete.

There is no argument that this Court has had the same rule regarding how the finding of negligence on the part of the employer terminates the employer's right to subrogation to an injured worker's third party recovery. The real issue is should this Court's rule, which came about long before the advent of comparative fault and the abolition of joint and several liability, continue to

stand with the passage of Idaho's comparative fault statutes and the abolition of joint and several liability?

In the case of *Pocatello Indus. Park Co. v. Steel W.,* 101 Idaho 783, 621 P.2d 399 (1980), an employee of Steel West by the name of Croft was injured by a malfunctioning door that fell on him. The building was owned by Pocatello Industrial Park and leased by Steel West. Steel West's workmen's compensation carrier paid Croft a little more than $14,000 in worker's compensation benefits. Croft sued Pocatello Industrial in District Court. Following a court trial the District Court found that Croft's damages were $80,000 and that Croft was 20% negligent and Pocatello Industrial Park was 80% negligent. The District Court then reduced Croft's recovery by 20%, and it further reduced the recovery by an additional $14,000 representing the subrogated amount of worker's compensation benefits paid by Steel West's carrier. Pocatello Industrial Park asked the District Court to reconsider and the District Court amended its findings by reducing Pocatello Industrial Park's negligence to 72% and increasing Croft's negligence to 28%. The District Court also amended the decision with respect to the worker's compensation benefits by not reducing Croft's recovery, instead the District Court ruled that Croft's recovery was subject to any lien or subrogation rights of the compensation carrier. Pocatello Industrial Park appealed. In reaching its decision on appeal this Court commented on its decision in *Liberty Mutual v. Adams,* 91 Idaho 151 (1966); "Furthermore, *Liberty Mutual* was decided prior to the Idaho legislature's adoption of a comparative negligence statute...For that reason, the status of the *Liberty Mutual* rule barring subrogation is

currently unknown. In fact, in *Tucker v Union Oil Co. of California*, 100 Idaho 590, 603 P.2d 156 (1979), that question was expressly reserved for another day." *Pocatello Indus. Park Co.*, 101 Idaho at 788.

Maravilla is correct when he traces this Court's rule regarding a negligent employer losing its right to subrogation back to 1966 and the *Liberty Mutual* case. However, after this Court's pronouncement in *Tucker* that it would address the *Liberty Mutual* decision for another day, that day never did come. To date this Court has not addressed the issue of whether the passage of Idaho's statutes abolishing joint and several liability, and enacting individual comparative responsibility makes the rule set forth in *Liberty Mutual* obsolete.

The Commission discussed this Court's decision in *Tucker* at length. In *Tucker* this Court refused to adopt the doctrine of comparative fault in a case where a plaintiff's employer was found to be partially at fault for the accident. *Tucker,* 100 Idaho at 592. This Court noted that if it did adopt the doctrine of comparative fault, the third party tortfeasor would "escape liability for the total damages to plaintiff otherwise assigned to him by the traditional doctrine of the joint and several liability of joint tortfeasors." Id. Tucker's employer had paid him over $16,000.00 in benefits at the time of the trial. The case proceeded to trial and Tucker was found to be 10% at fault, Tucker's employer was found to be 30% at fault, and the third party was found to be 60% at fault. *Tucker,* 100 Idaho at 593. The trial court reduced Tucker's award by the percentage of his fault, but it did not reduce his award by the amount of worker's compensation benefits paid to him by his employer. The third party asked the trial court to reduce the damages by the amount of the worker's compensation benefits paid to Tucker. The trial court refused the third party's requested reduction.

Id. This Court relied on the language of Idaho Code §6-804 as it read at the time of Tucker's suit, which statute continued to preserve the common law of joint and several liability, when it held that the third party's liability would not be limited to just its proportionate fault. *Tucker*, 100 Idaho at 598. This Court also determined that to avoid a double recovery Tucker's damages should be reduced by the amount of worker's compensation benefits received by Tucker. Id. This Court held that this would be an equitable result because pursuant to the holding of *Liberty Mutual* Tucker's employer had lost its subrogation right, and its ability to obtain reimbursement from the employee.

The Commission's decision explains why this Court's rule regarding a negligent employer made sense under the doctrine of joint and several liability that existed at the time of the *Liberty Mutual* decision. R., p. 158-163. In 1987 the Idaho legislature abolished joint and several liability, and instituted individual comparative fault and responsibility in negligence actions. I.C. §6-802 & 803(3). Since the abolition of joint and several liability, and the implementation of individual comparative fault and responsibility, this Court has not addressed if the holding of *Liberty Mutual* should be reviewed and changed.

Even though this Court has not directly addressed this issue, the California Courts have. Of note is the fact that in *Liberty Mutual* this Court relied on the California case of *Witt v. Jackson,* 57 Cal.2d 57, 17 Cal. Rpt. 369, 366 P.2d 641 (1961). In the case of *Rodgers v. Workers' Comp. Appeals Bd.,* 36 Cal.3d 330, 682 P.2d 1068 (Calif. 1984), California's Supreme Court discussed the *Witt* decision. The California Supreme Court noted that the *Witt* decision drew in part on the philosophy underlying the then prevailing all or nothing contributory negligence doctrine when the Court in *Witt* held that where the employer's negligence was a concurrent, proximate cause of the injury, the

employer was totally barred from obtaining any such reimbursement or credit. *Rodgers,* 36 Cal.3d at 334. The California Supreme Court then noted that with its decision in *Associated Construction & Engineering Co. v. Worker's Comp. Appeals Bd.,* 22 Cal.3d 829, 587 P.2d 684 (1978) the rule set forth in *Witt* was found to be obsolete because California had adopted comparative negligence principles. Id.

Other states which have addressed this issue have come to a similar conclusion. In *Aitken v. Industrial Comm'n,* 183 Ariz. 387, 904 P.2d 456 (1995) the Supreme Court of Arizona held that in order to promote fairness to all parties, and not allow an employer to benefit from his own wrong and also to be consistent with the principles of comparative fault, the negligent employer would still have its lien but the lien would apply to only those benefits paid that exceed the employer's proportionate share of the total damages fixed by the verdict in the action. *Aitken*, 183 Ariz. at 392.

The Washington Supreme Court held that the principles of comparative negligence requires a finding of reduction, not elimination, of the employers's statutory right to reimbursement. *United States Dist. Court for the E. Dist. of Wash. v. Pacificorp.,* 118 Wn.2d 167, 185, 822 P.2d 162, 180 (1991), unrelated part of holding superceded by statute. The Washington court also held that when there is multiple parties involved in an accident, the only satisfactory method of dealing with a multiple party accident is through a single action to apportion fault and allocate damages based on the apportionment of fault. Id.

This Court has the opportunity to reconsider its holding in *Liberty Mutual* The rationale behind the decision in *Liberty Mutual* was based on the all or nothing contributory negligence doctrine that existed at the time of the decision but which has been abolished in Idaho for decades.

It makes no sense to continue to cling to a rule that was based on a principal of common law that has been abandoned by Idaho. As the courts of other states have noted, there is a balanced approach that does not allow an employer to profit by its wrong doing, and that is consistent with the principals of comparative fault. In its decision the Commission went through several scenarios that showed how an injured worker would not be prejudiced by using a comparative fault approach to an employer's subrogated interest. R., p. 166-169.

This Court should hold that in the event an employer is found to be partially responsible for an employee's injury the employer's right of subrogation will be the amount of benefits paid that exceeds the employer's proportionate share of the total damages that are fixed by a verdict in the action. Since there is no jury verdict in this case, and only a settlement amount, Simplot's subrogated interest should be the amount of benefits it paid that exceeds its proportionate share of the settlement agreement.

CONCLUSION

Simplot requests that this Court reverse the Commission and hold that Res Judicata bars Maravilla from re-litigating the claim of Simplot's negligence. In the event this Court affirms the Commission's Res Judicata decision, Simplot requests that the rule announced by this Court in *Liberty Mutual* be overturned as obsolete and that Simplot's right of subrogation would be the amount that exceeds its proportionate share of the settlement proceeds based on its fault, if any.

DATED This 16 day of March, 2016.

LUDWIG ◆ SHOUFLER ◆ MILLER ◆ JOHNSON, LLP

By _____
Daniel A. Miller,
Attorney for Self-Insured
Employer/Defendant-Appellant

CERTIFICATE OF SERVICE

I hereby certify that on this 16 day of March, 2016, I caused a true and correct copy of the foregoing document to be served upon the following as indicated:

Fred J. Lewis
Patrick N. George
RACINE, OLSON, NYE, BUDGE
& BAILEY, CHTD.
P.O. Box 1391
Pocatello, Idaho 83204-1391

✓ U.S. Mail
__ Hand Delivery
__ Overnight Courier
✓ Facsimile Transmission
208-232-6109

_____
Daniel A. Miller